In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 945

JAMES VINCENT TREMONT, a/k/a GEORGE LARRO,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 351 F. 2d 144.

JURISDICTION

The judgment of the court of appeals was entered on September 30, 1965. A petition for rehearing was denied on November 26, 1965. On January 6, 1966,

Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to January 25, 1966, without prejudice to the Court's consideration of the timeliness of the application, and the petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the district court was correct in rejecting testimony that petitioner had been given a lie detector examination.

2. Whether petitioner was entitled to the services of a handwriting expert at government expense when the evidence indicated that he was not indigent.

3. Whether the court abused its discretion in refusing to transfer the trial to New Jersey after assuring itself that petitioner would not be prejudiced by a trial in Tennessee.

STATEMENT

After a jury trial in the United States District Court for the Western District of Tennessee, petitioner was convicted on December 2, 1963, of having violated the Dyer Act, 18 U.S.C. 2312, by transporting a stolen automobile from Elizabeth, New Jersey to Memphis, Tennessee. He was sentenced to imprisonment for five years.

Some time prior to June 23, 1962, the serial number plate was stolen from the doorpost of a white 1962 Cadillac convertible in Union, New Jersey (Tr. 142-144). On that day, an application for issuance

of license plates was filed in Alabama by "George Larro," using the stolen serial number (Gov't Exh. 6; Tr. 147-150).[1] On July 19, 1962, a similar automobile with New Jersey registration was stolen from a used car dealer in Elizabeth, New Jersey (Tr. 34-36). That same day the car was re-registered in New Jersey by Larro, who represented on his title application that he wished to transfer title from Alabama, and who attached to the application the Alabama registration that he had obtained with the stolen serial number (Gov't. Exhs. 5, 6, 7; Tr. 77-80).

Petitioner was identified by the used car dealer as having shown interest in purchasing the stolen Cadillac on the evening before the theft (Tr. 35, 102, 132). On the morning of July 19, petitioner again went to the dealer, and was given a demonstration ride. After they returned to the used car lot, the dealer invited petitioner to look around, proceeded to his office, put the car keys on a desk, and entered a back room to perform some office work. When he emerged, he discovered that the keys and Cadillac were gone (Tr. 103-104).

On July 21 and 22, 1962, Larro registered at a motel near Little Rock, Arkansas (Gov't Exh. 18; Tr. 257-265). The motel manager recalled that Larro

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[1] Alabama, a "non-title State", does not require an applicant to produce documentary proof of ownership before issuing license plates. The Alabama application form merely directs the applicant to describe the car and give its serial number (Tr. 147-150). The serial number is stamped both on the motor and on a plate screwed into the doorpost of every vehicle (Tr. 61).

was driving a 1962 white Cadillac convertible (Tr. 259). During his stay in Little Rock, Larro attempted to sell the car to a dealer, who became suspicious because the car had been registered in New Jersey, Alabama, and again in New Jersey, and because Larro offered to sell at an unusually low price. The dealer declined to purchase the car (Tr. 273-284).

On the evening of July 23, 1962, Larro sold the Cadillac to the owner of McGregor Motors in Memphis, Tennessee (Tr. 158-162) (Govt. Exhs. 13, 14), who paid by check made out to George Larro (Govt. Exh. 13). His salesman drove Larro to a motel, where Larro spent the night (Govt. Exh. 15; Tr. 207-210). The next morning Larro endorsed the check and cashed it at a Memphis bank (Tr. 225-252). On that day, McGregor attempted to sell the Cadillac, but the prospective vendee discovered that the serial number on the title was different from the number stamped on the motor of the car (Tr. 168-169, 254-255). McGregor notified police, who impounded the car and subsequently returned it to New Jersey. Petitioner was arrested soon afterwards.

At trial, petitioner was positively identified as "George Larro" by the motel owner and car dealer in Little Rock (Tr. 258, 279), the victimized dealer and his salesmen in Memphis (Tr. 166, 171, 194), and the Memphis bank personnel (Tr. 226, 250). In addition, a handwriting expert testified that petitioner's handwriting (Govt. Exh. 19) was the same as that of the "George Larro" who had applied for

the Alabama and New Jersey registrations, registered at the motels in Little Rock and Memphis, and endorsed the check at the Memphis bank (Govt. Exhs. 5, 6, 13, 15, 18, 20-25; Tr. 370-384).

Petitioner denied having committed the offense charged, or even having traveled out of New Jersey during the days in question. He and other witnesses testified that petitioner had been home, where he had assisted a mason in remodeling the outside of his home and attended a birthday party for his wife's niece (Tr. 415-629).

ARGUMENT

Since petitioner did not obtain, within 30 days of the judgment below, an extension of time within which to file his petition, the petition is out of time. There is, in any event, no reason for further review of this case.

1. During the cross-examination of the arresting officer, defense counsel elicited testimony that the officer was present when a lie detector test was administered to petitioner (Tr. 320). The government's objection to the admission of any evidence concerning such a test or its results was sustained by the trial court (Tr. 344, 409-413). This ruling was eminently correct. The overwhelming weight of authority supports the view that the test is not yet sufficiently reliable or accurate to warrant the use of the results as evidence. *McCroskey* v. *United States*, 339 F. 2d 895 (C.A. 8); *Marks* v. *United States*, 260 F. 2d 377 (C.A. 10), certiorari denied,

358 U.S. 929; *Frye* v. *United States*, 293 Fed. 1013 (C.A.D.C.); see Note, 23 A.L.R. 2d 1306, 1308 and supplement (citing authority from 27 States and the District of Columbia for rejection of tests; none for admission into evidence).[2]

2. Petitioner's claim that, as an indigent, he should have been permitted to retain a handwriting expert at government expense[3] presumes a fact completely refuted by the transcript of trial. The courts below have correctly determined from the record that petitioner was not an indigent. He was self-employed, as a long distance commercial carrier (Tr. 460); owned his trucks outright; and operated from his home, which had been purchased for $15,500 and was then worth in excess of $25,000 (Tr. 465, 489). The only encumbrance upon the house was an unwritten partial "private mortgage" held by a personal friend who had formerly owned the house (Tr. 489-490). And during July and August 1962, petitioner paid $1,200 cash to a mason for improvements on the house (Tr. 497). The record further indicates that petitioner twice flew by airplane from his home to Memphis at his own expense prior to trial (Tr. 466), and that petitioner's wife made the plane reservations for another defense witness (Tr. 618). Moreover,

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[2] Petitioner's claim that he "passed" the lie-detector test is not supported by the record. At the time of trial neither petitioner, counsel, nor the arresting officer knew the results of the test (Tr. 326, 409, 411).

[3] The trial occurred prior to the enactment of 18 U.S.C. 3006A(e), which provides government funds for expert witnesses on behalf of indigent defendants.

petitioner's present appellate counsel is privately retained by petitioner.[4] In these circumstances, the district court's statement at the close of the trial that petitioner was financially able to bear the costs of suit is wholly justified (Tr. 707).

3. Petitioner alleges that the district court abused its discretion when it refused to grant an oral motion at trial for a transfer of venue from Tennessee (where petitioner had sold the stolen car) to New Jersey. The motion, based largely on the alleged convenience of petitioner's witnesses, was not timely, since it was not raised "at or before arraignment" as required by Rule 22 of the Federal Rules of Criminal Procedure.[5] Even though the motion was not made until the opening of trial, the district court assured itself at the outset that petitioner was prepared for trial in Tennessee and granted a motion to subpoena from New Jersey the only two witnesses petitioner requested during trial (Tr. 10, 507, 557). Since the defense of the case was thus not hampered in any manner (see *Scott* v. *United States*, 255 F. 2d 18 (C.A. 4), certiorari denied, 357 U.S. 942), the district court acted within its discretion in refusing to grant peti-

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[4] At trial petitioner was originally represented by retained counsel, who withdrew, however, because of lack of cooperation (Tr. 6-7, 707). The district court appointed a new defense counsel, and requested that he inquire into the possible indigence of petitioner (Tr. 7). The record does not reveal whether any inquiry was made.

[5] Counsel's explanation for his delay in filing the motion was that petitioner had failed to cooperate with him (Tr. 13-14).

tioner's tardy motion, which would have required transferring the case to New Jersey on the eve of trial. *Kilgore* v. *United States*, 323 F. 2d 369 (C.A. 8), certiorari denied, 376 U.S. 922; *Addison* v. *United States*, 317 F. 2d 808 (C.A. 5), certiorari denied, 376 U.S. 905.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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